

REMARKS

Claims 1, 5, 7, 8, 10, 12 and 14-18 are pending in this application. By this Amendment, claims 1, 5, 7-8, 10 and 14-18 are amended. Various amendments are made for clarity and are unrelated to issues of patentability.

The Office Action objects to claims 1, 5, 7-8, 14 and 16-18 because of informalities. It is respectfully submitted that the above amendments obviate the grounds for objection. Withdrawal of the objection is respectfully requested.

The Office Action rejects claims 1, 5, 7-8, 10, 12 and 14-18 under 35 U.S.C. §103(a) over Applicant's Admitted Prior Art (hereafter AAPA) in view of U.S. Patent 5,678,229 to Seki et al. (hereafter Seki) and U.S. Patent 6,311,054 to Korepela. The rejection is respectfully traversed with respect to the pending claims.

Independent claim 1 recites monitoring at a mobile communications terminal, packets received or transmitted between a terminal equipment (TE) and a network to determine when a monitored received or transmitted packet corresponds to a Point-to-Point Protocol (PPP) control packet. Independent claim 1 also recites determining at the mobile communications terminal whether a control protocol setup state of the TE is established when the monitored received or transmitted packet corresponds to the PPP control packet. Still further, independent claim 1 recites in response to the mobile communications terminal determining that the setup state of the TE is established, cumulatively counting at the mobile communications terminal a number of all packets, excluding packets added during a protocol stack setting process, received or transmitted until every protocol session of the TE is released, wherein the determination of

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the TE being established indicates a start point of the cumulatively counting, the counting allowing the mobile communications terminal to determine a service data amount received or transmitted at the TE.

The applied references do not teach or suggest at least these features of independent claim 1. More specifically, the Office Action appears to rely on AAPA as disclosing features relating to monitoring packets received between a terminal equipment and a network to determine if a monitored received or transmitted packet corresponds to a control packet indicating a control protocol setup state of the TE is established. The Office Action specifically states that a control packet indicating a control protocol setup state of the TE is established is inherently present because otherwise communication cannot be established.

Applicant respectfully submits that AAPA does not teach or suggest monitoring at a mobile communications terminal when a monitored received or transmitted packet corresponds to a PPP control packet and determining at the mobile communications terminal whether a control protocol setup state of the TE is established when the monitored received or transmitted packet corresponds to a PPP control packet. Applicant respectfully submits that these features are not inherently present within AAPA. More specifically, AAPA does not determine at a mobile communications terminal when a monitored received or transmitted packet corresponds to the PPP control packet and then determine that a control protocol setup state of the TE is established (i.e., when the packet corresponds to the PPP control packet). The Office Action (on page 4) appears to state that it is inherent that the system knows if the packets are control packets or not. However, this alleged inherency does not suggest determining (at a mobile

communications terminal) when a packet corresponds to a PPP control packet. In order to show inherency, the Patent Office must show that the missing descriptive matter is necessarily present. See MPEP §2112(IV). Applicant respectfully requests the Patent Office to show that the AAPA teaches that the MT 20 determines that a packet corresponds to a PPP control packet (when dealing with communication between TE 10 and PDSN 30) and that the MT 20 determines whether a control setup state of the TE 10 is established when the packet corresponds to a PPP control packet. In the absence of additional information, applicant respectfully submits that AAPA does not suggest the specific features of independent claim 1 relating to the mobile communications terminal and a PPP control packet.

Furthermore, AAPA does not teach or suggest that in response to the mobile communications terminal determining that the setup state of the TE is established, cumulatively counting a number of all packets, wherein the determination of the TE being established indicates a start point of the cumulatively counting. The Office Action appears to rely on FIG. 2 and page 3, lines 11-15 of the present specification. However, this cited section does not suggest in response to determining that the setup state of the TE is established, cumulatively counting the number of all packets, wherein the determination of the TE being established indicates a start point of the cumulative counting. The Office Action appears to state that packets are counted from a point where the communication channel is set to the point of releasing. However, page 3, lines 11-15 clearly states that a communication provider calculates the packets. This does not teach or suggest cumulatively counting of the mobile communications terminal

and that the determination of the TE being established indicates a start point of the cumulatively counting.

Additionally, the Office Action appears to rely on Seki to suggest monitoring at a mobile communication terminal. The Office Action identifies Seki's radio modem accessory 10 as corresponding to the claimed mobile communications terminal. However, when discussing AAPA, the Office Action references steps S1, S2 and S3. However, these steps S1, S2 and S3 shown in FIG. 2 of AAPA do not correspond to steps/signals that involve the radio modem accessory 10 in communication with a TE or a PDSN (as in FIG. 2 of AAPA). Accordingly, AAPA may not be modified by Seki as suggested in the Office Action so as to maintain the specific steps of AAPA that the Office Action relies upon in finding the alleged features. Further, Seki's radio modem accessory 10 is not capable of performing the claimed monitoring, determining and counting as discussed above. The combination is therefore improper and/or does not suggest the features as alleged in the Office Action.

For at least the reasons set forth above, AAPA does not teach or suggest the features of independent claim 1 as alleged in the Office Action. Seki and Korepela do not teach or suggest these features of independent claim 1 missing from AAPA. Thus, independent claim 1 defines patentable subject matter.

Independent claim 10 recites determining at a mobile communications terminal when a received packet or a transmitted packet between the TE and the network corresponds to a Point-to-Point (PPP) control packet. Independent claim 10 also recites determining at a mobile communications terminal that a control protocol setup state of the TE is established in direct

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response to the determination that the received packet or the monitored packet corresponds to a PPP control packet. Still further, independent claim 10 recites starting with the determination that the TE is established, measuring at the mobile communications terminal an amount of provided data between the TE and the network. Independent claim 10 also recites that measuring the amount of provided data comprises: removing a header and tailer from said packets received or transmitted between the TE and the network such that the measured amount of provided data corresponds only to the payload portions of the packets, and counting a number of received or transmitted payload portions as the measured amount of data, and wherein the measurement of the data amount is performed starting from a point when the TE is determined to be established to a point when every protocol session of the TE is terminated.

For at least similar reasons as set forth above, the applied references do not teach or suggest all the features of independent claim 10. Furthermore, AAPA and the other applied references do not teach or suggest determining at the mobile communications terminal that a control protocol setup state of the TE is established in direct response to the determination that the received packet or the monitored packet corresponds to a PPP control packet. Still further, AAPA and the other applied references do not teach or suggest starting with the determination that the TE is established, measuring an amount of provided data between the TE and the network. Still further, AAPA and the other applied references do not teach or suggest that the measurement of the data amount is performed starting from a point when the TE is determined to be established to a point when every protocol session of the TE is terminated. Thus, independent claim 10 defines patentable subject matter.

Independent claim 15 recites determining, by the mobile communications terminal, when a received or transmitted packet corresponds to a Point-to-Point Protocol (PPP) control packet. Independent claim 15 also recites when the mobile communications terminal determines the PPP control packet, specifically identifying that a control protocol setup state of the TE is established. Additionally, independent claim 15 recites upon specific identification that the setup state of the TE is established, starting to count by the mobile communications terminal only payload portions of packets received or transmitted between the TE and the network, wherein the specific identification that the setup state of the TE is established indicates a starting point of the counting, the counting allowing the mobile communications terminal to identify a service data amount received or transmitted at the TE.

For at least similar reasons as set forth above, the applied references do not teach or suggest at least these features of independent claim 15. More specifically, AAPA and the other applied references do not teach or suggest that when the mobile communications terminal determines that the PPP control packet, specifically identifying that a control protocol setup state of the TE is established. Furthermore, AAPA and the other applied references do not teach or suggest upon specific identification that the setup state of the TE is established, starting to count only payload portions of the packets received or transmitted between the TE and the network, wherein the specific identification that the setup state of the TE is established indicates a starting point of the counting. Thus, independent claim 15 defines patentable subject matter.

Accordingly, each of independent claims 1, 10 and 15 defines patentable subject matter. Each of the dependent claims depends from one of the independent claims and therefore

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defines patentable subject matter at least for this reason. In addition, the dependent claims recite features that further and independently distinguish over the applied references.

### **CONCLUSION**

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance. Favorable consideration and prompt allowance of claims 1, 5, 7, 8, 10, 12 and 14-18 are earnestly solicited. If the Examiner believes that any additional changes would place the application in better condition for allowance, the Examiner is invited to contact the undersigned attorney at the telephone number listed below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this, concurrent and future replies, including extension of time fees, to Deposit Account 16-0607 and please credit any excess fees to such deposit account.

Respectfully submitted,



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